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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,909	08/29/2001	Jakob Barak	4873CIPCON	7948
7590 06/29/2004			EXAMINER	
Samuels, Gauthier & Stevens LLP Suite 3300 225 Franklin Street Boston, MA 02110			HWANG, VICTOR KENNY	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/941,909

Applicant(s)

BARAK ET AL.

Examiner

Victor K. Hwang

Art Unit

3764

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): objections to the disclosure and claims 29, 85, 112 and 122.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

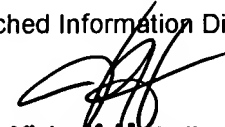
Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 29-42, 73-82 and 85-141.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


Victor K. Hwang
Patent Examiner

NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3764


Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive. Applicant presents two arguments. One against ERICSON and another against DYE.

In response to Applicant's argument that ERICSON neither explicitly teaches nor illustrates a drawing together relationship of the compartmental bonds, the Examiner disagrees. In looking at the flattened structure of the inflatable cell in Figs. 2, 10 and 11, one can see that the inflatable cell is constructed of two sheets 22,24 joined at their perimeter and at compartmental bonds 26,28,50,52,53 and 55. The amount of material on each sheet between compartmental bonds is equal. This construction is the same as the construction of Applicant's invention. Note the similarity of Fig. 7 of ERICSON and Fig. 4A of Applicant's invention. They are constructed exactly the same except for the number of intra-cell compartments. Applicant argues that since the sleeve of ERICSON is used as a splint, one would not want compression. Some may not want compression when using a splint, but clearly, ERICSON does teach the inner wall 24 moving toward the center of the sleeve. I would take this to mean that compression is being taught. ERICSON does not explicitly teach that the outer wall 22 moves INWARDLY to form a triangular shape. ERICSON teaches at col. 3, lines 20-25 that the outer wall of the hollow sleeve, with full inflation, takes on a triangular shape. There is no mention of the outer wall moving inwardly. The triangular shape can be seen in Fig. 9 and is a result of there being three intra-cell compartments. In summary, ERICSON teaches a sleeve having the same construction as Applicant's sleeve and therefore inherently provide the same circumferential constriction during inflation as Applicant's invention.

In response to Applicant's arguments that DYE does not teach a control means for determining a treatment specificity of each cell and for determining a timing sequence for inflating of each cell based on the determined treatment specificity of each cell, DYE teaches throughout the disclosure the use of a controller for controlling the inflation of the inflatable chambers. As taught by DYE, the controller intermittently inflates the ankle chamber, then the calf chambers, and finally the thigh chambers sequentially during periodic compression cycles in a pressure gradient profile which decreases from the lower or ankle portion of the sleeve to the upper or thigh portion of the sleeve(col. 5, lines 1-5). DYE does not use the same language as Applicant's claim, but provides the function as claimed.